

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5096 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 NO

MOHANLAL SINDHAWAT

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR SENIOR ADVOCATE for Petitioner

MT KT DAVE APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 29/07/98

ORAL JUDGEMENT

RULE. Service of Rule is waived by learned
A.P.P. Shri K.T.Dave for the Respondent.

2. Learned Senior Advocate Shri Prakash M.Thakkar
appearing for the petitioner has stated that the
petitioner - Shri Mohanlal Sindhawat is not at all

concerned with the offence registered as Prohibition C.R. No.495/95 at Kalol City Police Station and yet non bailable warrant has been issued to the petitioner to procure his presence in the Court of the Judicial Magistrate, First Class at Kalol. He has also drawn my attention to the FIR. Upon perusal of the FIR, it is clear and not in dispute that Shri Jaiswal Mohanlal Laduji figures as accused No.2 in the said FIR. It appears that the investigating officer could not procure presence of accused No.2 and, therefore, an application was given to the Judicial Magistrate, First Class, Kalol for issuance of non-bailable warrant in the name of Shri Jaiswal Mohanlal Laduji as could be seen from page 1 of the application dated 6.6.1996. It, however, appears from the last para of the said application that the prayer for issuance of non-bailable warrant is in the name of Sindhawat Mohanlal Lakuji. It appears that because of some mistake or on account of some misunderstanding, in the prayer clause, name of Shri Sindhawat Mohanlal Lakuji has been given.

3. Learned A.P.P. Shri K.T.Dave has fairly submitted that the name of the present petitioner has not been referred to in the FIR. There is a reference of a person, named, Mohanlal Sindhawat in a statement made by one of the witnesses. He has further submitted that if, in fact, the present petitioner is involved in the commission of the offence alleged in the above-referred FIR, appropriate application will be filed to do the needful. It will be open to the investigating officer to give an appropriate application for inclusion of the name of the present petitioner, if the present petitioner is, in fact, involved in the offence referred to hereinabove.

4. After hearing the learned Advocates, it is crystal clear that the name of the present petitioner is not at all appearing as an accused in the FIR referred to hereinabove. In the circumstances, non-bailable warrant could not have been issued to procure his presence by the Judicial Magistrate, First Class, Kalol.

5. In the circumstances, non-bailable warrant issued in the name of the present petitioner in pursuance of the order dated 13.8.1996 passed by the Judicial Magistrate, First Class, Kalol is quashed and set aside. Rule is accordingly made absolute.

Sd/-

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[KMG Thilake]